IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.21 OF 1995

Shri Ramakant Shripad Panandikar,
Sukhsagar Beach Resort,
Colva, Salcete,Goa-403708 ... APPELLANT

Versus

1. State of Goa
through Chief Secretary
having his office at
Secretariat,Panaji,Goa;

2. The Deputy Collector (L.A.O.)
Panaji, Goa ... RESPONDENTS.

Mr. V. Menezes, Advocate for the Appellant.

Mr. H.R. Bharne, Government Advocate,for the Respondents.

CORAM : D.G. DESHPANDE,J.

Date of reserving the Judgment: 6-2-2003

Date of pronouncing the Judgment:
February 27, 2003.

J U D G M E N T

Heard the Advocate for the Appellant and the Respondent.

2. This Appeal is filed by the original owner of the land challenging the Order of the Additional District Judge, South Goa, granting him compensation at the rate of Rs.70/- per square metre and rejecting his claim for more compensation.

3. By Government Notification dated 5th

April, 1981 under Section 4 of the Land Acquisition Act, the land of the Appellant was acquired for Parking of Vehicles and Recreational Facilities at Colva. The Land Acquisition Officer granted compensation at the rate of Rs.25/- per sq. metre. Therefore, the landlady made reference to the Court claiming Rs.350/- per square metre. The Court found that the Appellant was entitled to Rs.70/- per sq. metre and hence, being aggrieved by the said Order, this Appeal is filed.

4. It was contended by the Counsel for the Appellant that while granting compensation the Court did not take into consideration the location of the property, the fact that it was accessible by road, that it was on the shore of the sea well away from the setback line which was in force at the time of acquisition, that the Hotel of the Appellant was already running and the availability of electricity and telephone facilities near the acquired land and also the concerned sale deeds. He also contended that the evidence of the Valuer was not at all considered by the trial Court and considering, therefore, the aforesaid facts, the compensation awarded was to be held as inadequate and was required to be enhanced.

5. On the other hand, it was the case of the Government that the acquired plot was about half a kilometre in the interior to the main centre of Colva; that there was a creek coming on the way if one has to pass from the suit land to Colva beach; that bus stand was at a distance of half a kilometre from the suit plot; that the suit plot was situated within the control line, i.e. within 300 metres from the High Tide Line and, therefore, 50 per cent of the construction was possible. So far the sale deed dated 5-1-1981 (Exh.A-4) relied upon by the Applicant/Appellant is concerned, he contended that compensation granted at the rate of Rs.85/- per sq. metre was because of the smaller area of the land as comparable to the present acquired land and, therefore, for all the reasons according to him the compensation was adequate and, at any rate, no enhancement was required.

6. In order to prove his claim for enhancement, the Applicant examined himself as A.W.1 and also examined an Architect Mr. Subhash Chandra N. Bhobe as A.W.2. The Applicant also tendered the aforesaid sale deed as Exhibit A.W.1/C and B.

7. In his evidence A.W.1 has stated that the acquired land is about 100 metres from the

Tourist Centre; that it forms part of a bigger property; that in the remaining part of the property there was a Hotel running since 1979 which was fully developed by water and electricity. The land acquired is open flat land. The acquired land is allotted to the South Central Railway for building Holiday Home. He also contended that he had got released the said land in order to construct a Hotel but he could not produce any documents in that regard.

8. The Applicant further stated that his Architect Bhobe has given value of the land at Rs.125/- per square metre and he produced sale deed Exhibit A.W.1/B dated 5-1-1981 where the price was fixed at Rs.85/- per sq. metre and another sale deed dated 1-9-1990 (Exh.A.W.1/C) where the price was fixed at Rs.56/- per sq. metre. He also stated that under the same Notification, the Government acquired different lands for which compensation at the rate of Rs.70/- per sq. metre was granted.

9. In his cross-examination A.W.1 admitted that the bus stand at Colva is at a distance of 0.5 Km. by road. That one has to cross a creek which is between the sea-shore and the acquired land; that there is no direct access to go

to the seashore from the acquired land. In his further cross-examination he admitted that the property which is adjacent to the acquired property having Survey No.23/13 is of similar type of property having survey No.23/14 and the said property was sold at Rs.24/- per sq. metre and odd. However, this was a fraudulent sale in order to avoid income-tax clearance. He also admitted that in the sale deed dated 5-1-1981 Margao-Colva road was one of the boundaries of that property which indirectly means that there is no road abutting that property. The property shown by Exh.A.W.1/C is also bounded on one side by the road.

10. So far as the Architect's evidence is concerned, he has stated that he inspected the land in 1981, prepared his report as per Exh.A.W.1/A. He had considered the sale deed at the relevant period and according to him, the land comprised in the sale deed of 1981 was low-lying land, agricultural land and did not have facilities like water and electricity. He also referred to one Survey No.24/A which was agreed to be sold at Rs.155/- per sq. metre and it was also an agricultural land. He stated that the acquired property had direct Colva beach frontage and, therefore, he valued the land at Rs.125/- per sq. metre.

11. In the cross-examination P.W.2 admitted that there was no direct access from the acquired property to Colva. That there was a nullah in between. The distance between the high tide mark and the acquired land was about 125 metres but in ' 1981 there was no control line. He stated that he has relied upon the sale deed which he found reasonable and relevant but did not consider the Survey No.23/13.

12. In the background of this evidence and the said two sale deeds, the learned Counsel firstly contended that compensation at the rate of Rs.125/- per sq. metre should have been awarded whereas, on the other hand, Mr. Bharne contended that in fact grant of compensation at the rate of Rs.70/- was also wrong and exorbitant if, as admitted by the Applicant a part of the acquired land was sold at Rs.27/- per sq. metre. Mr. Bharne, therefore, contended that no further enhancement was required.

13. Admittedly when the trial Court has granted Rs.70/- per sq. metre there is no question for further reduction because there is no cross-appeal. Though the findings can be challenged by the Appellant, even then this is not a case of

reduction of the compensation awarded. In the impugned Order the trial Court considered the oral evidence and the documents and came to the conclusion that the Appellant was entitled for enhanced compensation. The trial Court took into consideration the sale deed dated 5-1-1981 wherein the value of the property was fixed at Rs.85/- per sq. metre.

14. Looking therefore to the location of the property, its situation, the availability of electricity and water at the relevant time, its frontage to the Colva beach and also looking to the fact that in the sale deed dated 5-1-1981 the price was fixed at Rs.85/- per sq. metre, in my opinion, the Court should have awarded compensation of at least Rs.85/- per square metre. The deduction of 10% because of the creek does not appear to be justified. Therefore, even if the Appellant is required to be allowed the compensation claimed at Rs.125/- per sq. metre, it cannot be granted but it has to be granted at Rs.85/- per square metre.

15. I, therefore, pass the following Order:

The Appeal is partly allowed. The

Appellant will be entitled to compensation at the rate of Rs.85/- per square metre with appropriate increase in solatium. The rate of interest shall be the same. The Respondents will be entitled to claim deduction for the amount already paid to the Appellant along with costs of this Appeal as per Rules.

D.G. DESHPANDE,J.

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